

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
Docket #12cr871
UNITED STATES OF AMERICA, : 1:12-CR-00871-CM
Plaintiff, :
- against - : New York, New York
November 27, 2012
SCOTT, :
Defendant. :

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PROCEEDINGS BEFORE
THE HONORABLE JAMES L. COTT,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: United States of America versus Thomas Scott. Counsel, state your name for the record.

MR. RAHUL MUKHI: Yes, Your Honor, Rahul Mukhi for the United States, good morning.

THE COURT: Hello.

MR. MARLON KIRTON: For Mr. Scott, good morning, Your Honor.

THE COURT: Hello, everybody. Mr. Scott, welcome back.

MR. SCOTT: Thank you, sir.

THE COURT: You may be seated. Mr. Mukhi, is this a presumption case?

MR. MUKHI: Yes, Your Honor, it is.

THE COURT: And the Government seeks detention?

MR. MUKHI: Yes, Your Honor.

THE COURT: And do you want to elaborate a little bit?

MR. MUKHI: Yes, Your Honor, we seek detention based on risk of flight as well as danger to the community, and rest on the presumption. With respect to danger to the community, the defendant's long criminal history, which is set forth in the Pre-Trial Services report by itself shows the defendant is a danger to the community. By my count, he has ten total prior convictions, including two theft

convictions, two burglary convictions, giving a false statement, resisting arrest when he was charged with possessing a handgun, obtaining money by false pretenses, a federal bank fraud conviction, two drug possession convictions, and possession of a firearm conviction.

He spent at least nine and a half years in prison since he was 18 years old. Comparing that to the defendant's rap sheet, it appears the only time he has not been committing crimes is when he's been incarcerated. And so the defendant is not deterred from committing crimes, even while he's under supervision, as evidenced by the fact that he has a prior violation of supervised release. He also was on probation when he committed the instance offense.

In the instant offense, the defendant is charged in an indictment with conspiring to distribute more than one 1 kilogram of heroin. As set forth in the complaint, which I handed a copy of to Your Honor's deputy, the defendant conspired between 2009 and October 2012 to distribute approximately 15 kilograms of heroin.

The evidence of the defendant's participation in this conspiracy is overwhelming. There are recordings of the defendant speaking by telephone to a cooperating witness and numerous conversations over the course of many

1
2 months beginning in January 2012 and ending in October 2012
3 when the defendant and his coconspirator were arrested. On
4 that day of the arrest, there were additional in-person
5 recordings of the defendant purchasing what he believed to
6 be 2 kilograms of heroin. That meeting was not only
7 observed and recorded by the cooperating witness, it was
8 also observed at the same time by FBI agents who were in an
9 adjoining room who viewed both video and audio
10 transmissions at the time that this transaction was taking
11 place. Obviously, that is additional and powerful
12 corroborative evidence of what the confidential witness
13 would testify to.

14 In addition, both defendants, including this
15 defendant, gave expansive post-arrest, post-Mirandized
16 confessions. That's set forth in the complaint. Mr. Scott
17 admitted to his role; he admitted to conducting
18 approximately 20 heroin transactions with the cooperating
19 witness in the past. He said there were varying amounts,
20 up to 2 kilograms of heroin at a time.

21 In addition, the defendant is facing substantial
22 penalties if he's convicted of (indiscernible) offense.
23 Under 841(b)(1)(a) the defendant faces a ten-year mandatory
24 minimum sentence. In addition, because the defendant has a
25 prior drug felony, the mandatory minimum doubles to 20

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years if the Government were to file a prior felony information prior to conviction.

Finally, with respect to some of the other facts that are laid out in the Pre-Trial Services report, the defendant also admitted that he smokes marijuana, or did, until he was arrested on daily basis. He also stated that he's been unemployed for nine months. And so for those reasons the Government believes that the presumption cannot be overcome in this case.

THE COURT: Thank you, Mr. Mukhi. Mr. Kirton.

MR. KIRTON: Your Honor, I'm going to make the following bail package for the Court's consideration: \$250,000 personal recognizance bond, cosigned by three financially responsible persons, secured by \$5,000 of cash, as well as the equity in the home owned by his mother who lives in Baltimore, Maryland. Strict Pre-Trial supervision, home detention with electronic monitoring, travel restricted to the District of Maryland as well as the Southern District of New York. Defendant to allowed out only for court, attorney visits, and employment.

Your Honor, I'm gonna give some detail about some of the cosigners that agreed to essentially stand behind Mr. Scott. One is his sister, her name is Kimberly Scott. She's worked for 12 years at a company called Edwin

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2 Corporation in Baltimore, Maryland. The second person is
3 his cousin, Letia Scott. She's worked for the past ten
4 years at a barbershop in Baltimore. And the last cosigner,
5 of course, is his mother. Her name is Sinsrae Johnson.
6 She owns the home in Baltimore that she's willing to put
7 up, at least part of the equity for the bail package in
8 this case.

9 Essentially, Judge, there's nothing we can say
10 about, not much we can say about my client's record. It is
11 what it is. What I can say is that he has no open
12 warrants, no cases before the court to my knowledge.
13 Concerning the facts and circumstances of this case, Judge,
14 it is what it is. The proof is what it is. However, we
15 believe that the package offered by the defense is enough
16 to overcome the presumption in this case.

17 My client did, in fact, own a business. It said I
18 the Pre-Trial Services report that he worked as a cab
19 driver for about two years, and he mentioned the name of
20 the company. The company that he mentioned is the company
21 that he himself owns and ran quite successfully in
22 Baltimore, Maryland. In fact, unfortunately, the business
23 had some problems after he was I think arrested out of
24 state on some sort of a domestic dispute that he had with
25 his prior girlfriend's mother. But he did own a business,

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and he did run the business quite successfully. The business is based in his home town in Baltimore, Maryland.

In fact, should he be released on bail or bond, in this particular case, he will go back, reopen the business, and start it up again. The business was able to support himself, even the codefendant in this case, as well as members of my client's family.

Your Honor, for all the above reasons I submit to the Court that the package that we submitted is sufficient to overcome the presumption in this case, and we believe that the relatives of the defendant will exercise moral suasion over him to ensure his appearance in court. And also the fact that my client will be fully engaged in his business, a suggestion to the court that his strong ties to the community in the Baltimore area should be enough to overcome the presumption before the Court.

THE COURT: All right, thank you, Mr. Kirton. Mr. Mukhi, anything further you want to say.

MR. MUKHI: Nothing further unless the Court has any specific questions.

THE COURT: All right. In a presumption case, a defendant really has I think a difficult burden because Congress in creating the presumption has recognized there are certain kinds of cases where - did you want to say

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something to your lawyer, Mr. Scott?

MR. SCOTT: I wanted to say something to the Court if possible.

THE COURT: I'm sorry?

MR. SCOTT: I wanted to say something to the Court if possible.

THE COURT: Mr. Kirton has to speak on your behalf to me.

MR. SCOTT: Oh.

THE COURT: Okay? So if there's something you want him to say for you before I say something further, why don't you tell him what it is.

MR. SCOTT: Yes.

(pause in the proceeding)

MR. KIRTON: Well, I think he wanted me to point out a few things concerning his record. Number one, most of the convictions talked about by the Government were more than 20 years ago. That's one thing. The other thing is there's a series of arrests that occurred between 2005 and 2007, most of which resulted in no conviction whatsoever.

So essentially he does have a record, but I think his criminal history is somewhat overstated by the document before the Court. It really doesn't reflect the fact that many of these charges resulted in no criminal conviction

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whatsoever. Secondly, many of these convictions were more than 20 years old. And the one felony that I think the Government cited in 2010, first of all, was a marijuana possession. Most of that sentence was, in fact, suspended, so that at the end of the day my client received a one year and six month probationary sentence.

So, yes, he does have a record, but to a certain extent, his criminal history is somewhat overstated by this particular document. He does have it, but it's not as onerous as it seems based on looking at this document.

THE COURT: All right, I appreciate that, and I think that's a fair point. But as you yourself said, Mr. Kirton, you know, it is what it is, and I recognize that, you know, if you go looking at all three pages of the record, and, of course, it's never good when a defendant before a court has three pages of a record, and we look at each one, I understand that, you know, some charges were dismissed, some charges were (indiscernible), but there were a number of either pleas or otherwise guilty findings along the way such that between age 18, 1991, up until as recently as this year, although I don't know what this particular charge is and it doesn't seem to be resolved, and then, of course, the charges pending before this Court, there seems to be, you know, a fairly long history, perhaps

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2 not as ongoing or consistent I guess is your point, Mr.
3 Kirton.

4 If the only issue before me was whether the
5 criminal history in and of itself disqualified him from
6 overcoming a presumption, I would take the point that
7 you're making more seriously. But the law requires me to
8 look at a number of things, not just the criminal history.
9 I have to look at the nature and the circumstances of the
10 offense charged, first and foremost.

11 So I'll look at the charges that Mr. Scott is
12 facing here. They're serious charges. And I look at the
13 evidence that appears to support those charges as outlined
14 in the complaint in this case and as described by Mr.
15 Mukhi, including admissions by the defendant himself, and
16 it seems to me that these are serious charges in which the
17 evidence is particularly strong.

18 So given the charges and the way that the evidence
19 as well as Mr. Scott's criminal history, as well as the
20 fact that, as the Pre-Trial Services officer reports in his
21 report, that there is a substance abuse history here, and
22 the fact that some additional criminal activity was
23 undertaken by Mr. Scott while he was otherwise under
24 supervision or probation. Adding all of those things
25 together gives me great concern about trying to overcome

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the presumption by setting the conditions.

I know Pre-Trial Services always recommends setting conditions whenever there are any possible conditions that can be set, and it's obviously my obligation under the Bail Reform Act, if there are any conditions or combinations of conditions that I can set, to do so. But in this case Pre-Trial Services has recommended that the defendant be detained. I have looked carefully at the Pre-Trial Services report, I have read the complaint, I've heard counsels' arguments, and I'm not prepared to set conditions at this time because I think much more on the basis of danger than on the basis of non-appearance I don't think there are conditions that I can set.

However, judges disagree about these things. This case has been indicted. The case is assigned to Judge McMahon, and she may disagree with this. So, Mr. Kirton, I would encourage you to seek an appeal of my decision detaining your client to Judge McMahon and letting her decide whether she will affirm that decision or reverse it. But that is my conclusion at this time. So the request to set conditions is denied for the reasons set forth. Anything further from the Government?

MR. MUKHI: Nothing from the Government.

THE COURT: Mr. Kirton, anything further?

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MR. KIRTON: No, Your Honor.

THE COURT: All right, thank you. Have a good
day.

MR. MUKHI: Thank you, Judge.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America versus Scott, Docket #12cr871, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: May 22, 2013